

### **REMARKS/ARGUMENTS**

This Amendment and Response is responsive to the supplemental non-final Office action dated August 22, 2008, setting forth a shortened three month statutory period for reply expiring on November 22, 2008. This Amendment and Response is submitted on November 24, 2008, the 22<sup>nd</sup> being a Saturday.

The Assignee thanks the Examiner for reviewing this application and issuing an Office action.

By this Amendment, claims 9, 10, 11, 252 and 259 are amended. No claims are canceled or added. Thus, upon entry of this Amendment, claims 9-12, 176-179 and 252-266 will remain pending in the application, with claims 9, 10, 11, 176, 252 and 258 being independent claims.

#### **I. Claim Rejections under 35 U.S.C. § 102**

The Office Action rejects claim 9 under 35 U.S.C. § 102(a) and (b) over U.S. Patent No. 6,217,487 to Reinert. The Assignee respectfully traverses this rejection.

Independent claim 9 recites an exercise machine comprising first and second treadles and at least one pair of flanges upwardly extending from a frame and at least one rod extending through the frames of the treadles other than at the rollers and through the at least one pair of flanges such that the first and second treadles are supported to pivot about the at least one rod relative to the frame near respective rear ends during exercise use in response to a user's weight. The Assignee respectfully submits that Reinert fails to teach such features.

Although Reinert arguably discloses a first treadle 29 and a second treadle 31, the Assignee respectfully submits that neither of the treadles 29, 31 in Reinert are supported to pivot relative to the frame near respective rear ends by at least one rod extending through frames of the treadles as recited in claim 9. The Assignee respectfully points out that the treadles 29, 31 in Reinert do not include respective treadle frames, and that Reinert only teaches a static incline adjustment of the treadles 29, 31 in Reinert by repositioning one or both

of the rollers 33, 35, 43, 45 via the respective axles 37, 39, 47, 49. Thus, Reinert does not teach that either of the treadles 29, 31 is supported by at least one rod extending through the frame of the treadle to pivot about the at least one rod relative to the frame near respective rear ends during exercise use in response to a user's weight.

Therefore, the Assignee respectfully submits that independent claim 9 is patentable over Reinert, and respectfully requests reconsideration and withdrawal of the rejection.

The Office Action rejects claim 9 under 35 U.S.C. § 102(a) and (b) over U.S. Patent No. 6,811,519 to Kuo. The Assignee respectfully traverses this rejection.

The Assignee respectfully submits that Kuo also fails to teach the features of claim 9 noted above.

Although Kuo arguably discloses a first treadle 46 and a second treadle 47, the Assignee respectfully submits that neither of the treadles 46, 47 in Kuo are supported, by at least one rod extending through frames of the treadles other than at the rollers, to pivot about the at least one rod relative to the frame near respective rear ends as recited in claim 9. The Assignee respectfully points out that the treadles in Kuo are supported by a shaft 40 extending through rollers 48 and unnumbered flanges. Thus, Kuo does not teach that either of the treadles 46, 47 is supported by at least one rod, extending through the frame of the treadle other than at the rollers, to pivot relative to the frame near respective rear ends during exercise use in response to a user's weight.

Therefore, the Assignee respectfully submits that independent claim 9 is patentable over Kuo, and respectfully requests reconsideration and withdrawal of the rejection.

The Office Action rejects claim 9 under 35 U.S.C. § 102(a) and (b) over U.S. Patent No. 5,336,146 to Piaget (Piaget 146). The Assignee respectfully traverses this rejection.

The Assignee respectfully submits that Piaget 146 also fails to teach the features of claim 9 noted above.

Similar to Kuo, Piaget 146 fails to disclose first and second treadles 14 that are supported by at least one rod extending through frames of the treadles other than at the rollers to pivot about the at least one rod relative to the frame near respective rear ends as recited in claim 9. The Assignee respectfully points out that the treadles 14 in Piaget 146 are supported by shafts 40, 42 extending through rollers 32. Thus, Piaget 146 does not teach that either of the treadles is supported by at least one rod, extending through the frame of the treadle other than at the rollers, to pivot about the at least one rod relative to the frame near respective rear ends during exercise use in response to a user's weight. Further, Piaget 146 fails to disclose that either of the shafts 40, 42 extend through at least one pair of flanges as recited in claim 9.

Therefore, the Assignee respectfully submits that independent claim 9 is patentable over Piaget 146, and respectfully requests reconsideration and withdrawal of the rejection.

The Office Action rejects claim 9 under 35 U.S.C. § 102(a) and (b) over U.S. Patent No. 5,626,539 to Piaget (Piaget 539). The Assignee respectfully traverses this rejection.

The Assignee respectfully submits that Piaget 539 also fails to teach the features of claim 9 noted above.

Similar to Piaget 146, Piaget 539 fails to disclose first and second treadles 14 that are supported by at least one rod extending through frames of the treadles other than at the rollers to pivot about the at least one rod relative to the frame near respective rear ends as recited in claim 9. As noted above, the treadles 14 in Piaget 539 are supported by shafts 40, 42 extending through rollers 32. Thus, Piaget 539 also does not teach that either of the treadles is supported by at least one rod, extending through the frame of the treadle other than at the rollers, to pivot relative to the frame near respective rear ends during exercise use in response

Appl. No. 10/789,182  
Reply to Office Action of August 22, 2008

to a user's weight. Further, Piaget 539 fails to disclose that either of the shafts 40, 42 extend through at least one pair of flanges as recited in claim 9.

Therefore, the Assignee respectfully submits that independent claim 9 is patentable over Piaget 539, and respectfully requests reconsideration and withdrawal of the rejection.

The Office Action rejects claims 9, 10, 252, 255-259, 262 and 263 under 35 U.S.C. § 102(a) over U.S. Patent No. 6,893,383 to Chang et al. (Chang). The Assignee respectfully traverses this rejection.

The Assignee respectfully submits that Chang fails to teach the features of claim 9 noted above.

Similar to Kuo, Chang arguably discloses first and second treadles 12. However, the Assignee respectfully submits that neither of the treadles 12 in Chang are supported, by at least one rod extending through frames of the treadles other than at the rollers, to pivot about the at least one rod relative to the frame near respective rear ends as recited in claim 9. The Assignee respectfully points out that the treadles 12 in Chang are supported by an axle 32 extending through a roller/cylinder 31 and supports 111.

The Office Action refers to elements 141 and 142 of Chang. Although respective pairs of elements 141, 142 arguably support the treadles 12, elements 141 and 142 are not disclosed in Chang as providing at least one rod that extends through the frame of either treadle other than at the rollers, about which either treadle is supported to pivot relative to the frame near respective rear ends during exercise use in response to a user's weight. Further, elements 141 and 142 are not disclosed in Chang as providing at least one rod that extends through at least one pair of flanges as recited in claim 9.

Therefore, the Assignee respectfully submits that independent claim 9 is patentable over Chang, and respectfully requests reconsideration and withdrawal of the rejection.

Independent claim 10 recites an exercise machine comprising a frame, first and second treadles, and means for pivotally coupling frames of the treadles to the frame at a position between the first and second ends of the treadle frames such that the first and second treadles are supported to pivot about said position relative to the frame near respective rear ends. The Assignee respectfully submits that Chang fails to teach such features.

The Assignee respectfully points out that a respective pair of elements 141, 142 cited in the Office Action do not support a respective treadle in Chang to pivot about a position, between the first and second ends of the treadle frames, relative to the frame near a respective rear end as recited in claim 10. Although the treadles in Chang are supported by the elements 141, 142, the treadles in Chang do not pivot about that position. Rather, the treadles in Chang pivot about the position of the axle 32.

Therefore, the Assignee respectfully submits that independent claim 10 is patentable over Chang, and respectfully requests reconsideration and withdrawal of the rejection.

Independent claim 252 recites an exercise device comprising a frame, and first and second treadles, wherein the first treadle frame is pivotally coupled with the frame at a first pivot axis between a first front rotation axis and a first rear rotation axis such that the first treadle is supported to pivot relative to the frame near its second end about the first pivot axis, and wherein the second treadle frame is pivotally coupled with the frame at a second pivot axis between a second front rotation axis and a second rear rotation axis such that the second treadle is supported to pivot relative to the frame near its second end about the second pivot axis. The Assignee respectfully submits that Chang fails to teach such features.

The Assignee respectfully points out that a respective pair of elements 141, 142 cited in the Office Action do not support a respective treadle in Chang to pivot about a respective pivot axis, between respective front and rear rotation axes, relative to the frame near a respective rear end about the respective pivot axis as recited in claim 252. As discussed above, although

Appl. No. 10/789,182  
Reply to Office Action of August 22, 2008

the treadles in Chang are supported by the elements 141, 142, the treadles in Chang do not pivot about that position. Rather, the treadles in Chang pivot about the position of the axle 32.

Therefore, the Assignee respectfully submits that independent claim 252 is patentable over Chang, and that dependent claims 255-257 are patentable over Chang at least in view of the patentability of claim 252 from which they depend, as well as for the additional features they recite. Accordingly, the Assignee respectfully requests reconsideration and withdrawal of the rejection.

Independent claim 258 recites an exercise device comprising first and second frame assemblies each adapted to pivot about a respective pivot axis that is located between front and rear rotation axis of the respective frame assembly. The Assignee respectfully submits that Chang fails to teach such features.

As discussed above, each respective pair of elements 141, 142 in Chang do not support a respective treadle or frame thereof to pivot about a respective pivot axis located between respective front and rear rotation axes as recited in claim 258. Although the treadles in Chang are supported by the elements 141, 142, the treadles in Chang do not pivot about any axis defined thereby, but only pivot about the axis defined by the axle 32.

Therefore, the Assignee respectfully submits that independent claim 258 is patentable over Chang, and that dependent claims 259, 262 and 263 are patentable over Chang at least in view of the patentability of claim 258 from which they depend, as well as for the additional features they recite. Accordingly, the Assignee respectfully requests reconsideration and withdrawal of the rejection.

The Office Action rejects claims 11 and 12 under 35 U.S.C. § 102(a) and (b) over U.S. Patent No. 6,264,042 to Cossey, Jr. et al. (Cossey). The Assignee respectfully traverses this rejection.

Independent claim 11 recites an exercise machine comprising a frame, a first treadle, a second treadle, and means for pivotally coupling the first and second treadles to the frame at a location respectively between ends of treadle surfaces defined by the first and second treadles such that the first and second treadles are supported to pivot relative to the frame near respective rear ends. The Assignee respectfully submits that Cossey fails to teach these features of claim 11.

The Office Action alleges that Cossey "discloses all of applicant's claimed invention," noting that the preamble language is not given any patentable weight. However, the Office Action fails to provide any basis in fact for the alleged teaching of the features recited in the body of claim 11.

For example, claim 11 recites a frame and first and second treadles. Each treadle is recited as having a belt, a treadle frame, and a set of three rollers defining a triangular shape with the belt positioned about the set of rollers. Arguably, Cossey discloses an arrangement of a belt 50 positioned about a set of three rollers/pulleys 64, 66 defining a triangular shape. However, the Assignee respectfully points out that Cossey fails to disclose a frame of this arrangement apparently alleged to be a treadle. Further, the Assignee respectfully points out that Cossey fails to disclose a frame to which this arrangement is coupled.

Assuming arguendo that a frame may be inherent to support the axles of the pulleys 64, 66, there is simply no disclosure or suggestion in Cossey to have such a frame pivotally coupled to another frame. The Assignee respectfully submits that a person skilled in the art would recognize that at least the pulleys 66 in Cossey would be configured to have a fixed position relative to the conveying devices 24, 28 to present the substantially planar region 36 of the sorter device 26 therebetween, as illustrated in Fig. 4, for example. At best, the Assignee respectfully submits that the lack of any disclosure regarding frames in Cossey would suggest that any stationary frame arrangement may be employed to support the structures shown.

As such, the Assignee respectfully submits that Cossey fails to disclose a frame, a treadle including a treadle frame, and means for pivotally coupling the first and second treadles to the frame at a location respectively between ends of treadle surfaces defined by the first and second treadles such that the first and second treadles are supported to pivot relative to the frame near respective rear ends, as recited in independent claim 11.

Therefore, the Assignee respectfully submits that independent claim 11 is patentable over Cossey, and that dependent claim 12 is patentable over Cossey at least in view of the patentability of claim 11 from which it depends, as well as for the additional features it recites. Accordingly, the Assignee respectfully requests reconsideration and withdrawal of the rejection.

## II. Claim Rejections under 35 U.S.C. § 103

The Office Action rejects claims 253, 254, 260, 261 and 264-266 under 35 U.S.C. § 103(a) over Chang. The Assignee respectfully traverses this rejection.

The Assignee respectfully submits that claims 253, 254, 260, 261 and 264-266 are patentable over Chang at least in view of the patentability of claims 252 and 258 from which they respectively depend, as well as for the additional features they recite, as well as for the additional features they recite.

The Assignee respectfully disagrees with the assertion that the Assignee's identification of Figures 61a, 61b, 92, 93 and 94 as belonging to a single species requires that they be treated as such for purposes of examination, or requires that differences therebetween to be considered as obvious variants.

The Assignee respectfully points out that the Assignee provided a reasoned explanation as to why these Figures could be considered a single species. However, the Assignee did not argue or otherwise state that the differences shown in these Figures were non-distinct or

obvious variants. On the contrary, the Assignee specifically stated that the Figure 92, 94 and 61b could be identified as subspecies of the species encompassing Figures 61a, 61b, 92, 93 and 94, and only argued that Figures 61a, 61b, 92, 93 and 94 could be grouped together as a species for examination purposes without presenting an undue burden.

The Office was free to require further restriction to one of the subspecies if the burden of examination of the more generic species was considered too great. However, the fact that no further restriction was considered necessary by the Office does not require or justify consideration of differences between the figures and the claims as obvious variants.

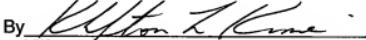
Accordingly, the Assignee respectfully requests reconsideration and withdrawal of the rejection.

### III. Conclusion

After entry of the above listing of claims and remarks, claims 9-12, 176-179 and 252-266 remain pending in the application. In accordance with the amendments and arguments set forth herein, the Assignee respectfully submits the application and all claims are in a condition for examination on the merits and respectfully requests such examination. Further, the Assignee respectfully requests, as appropriate, reinstatement of any withdrawn claims should any generic claims be found allowable.

The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

Respectfully submitted,

Date: November 24, 2008  
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